

Employers Face New Accommodation Requirements For Nursing Mothers

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In our [recent blog post](#), we highlighted legislation that will impact employers this year related to nursing and pregnant employees: the Providing Urgent Maternal Protections for Nursing Mothers Act (the “PUMP Act”) and the Pregnant Workers Fairness Act (the “PWFA”). As this legislation becomes effective—with the PUMP Act taking effect on April 28, 2023 and the PWFA set to become effective on June 27, 2023—the Department of Labor’s Wage and Hour Division (the “WHD”) released a [new bulletin](#) concerning enforcement of the PUMP Act.

In the bulletin, the WHD emphasizes the PUMP Act’s increased scope, noting that it now applies to *9 million more employees* not previously covered under the FLSA. The PUMP Act requires employers to provide nursing employees with unpaid, reasonable break time **every time** the employee has such a need for one year after the child’s birth. Importantly, the employee must be completely relieved from duty for the break to be unpaid. For teleworking employees, employers must provide break time as if those employees were working on-site. The WHD offered several examples of what could constitute “reasonable break time,” including an example of an employee who takes four 25-minute breaks each day.

These new accommodation obligations affect not only non-exempt (so-called “hourly” employees) but exempt (“salaried”) employees as well. The WHD explains that, like non-exempt employees, salaried employees must be given reasonable break time and an employer may not reduce a salaried employee’s pay because she is taking these breaks. Employers must also provide a suitable and “functional” location (not a bathroom) for pump breaks shielded from view and free from intrusion as well as a place to safely store milk. Generally, an employer must furnish a locked door or sign to ensure the employee’s privacy.

The WHD also addressed retaliation which is prohibited under the PUMP Act. For instance, the WHD described as retaliatory an employer that asks an employee to work additional hours on the weekend to make up time spent during their pump breaks.

Lastly, the WHD discussed the various exemptions applicable to small businesses, air carriers, rail carriers, and motorcoach services operators. Notably, small businesses (50 or fewer employees) seeking an exemption must show that compliance will require an undue hardship. The WHD explains that undue hardship is analyzed on an “individual employee basis,” *i.e.*, that the specific employee’s needs would cause an undue hardship in light of the size, financial resources, nature, and structure of the employer. Small businesses should exercise caution in seeking an exemption as they will bear the burden of proving undue hardship.

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